

CALIFORNIA LITIGATION:

Section Chair's Editorial, Volume 11, Number 1, Fall 1997

The Juxtaposition of Technology and Civility in the Law

By George L. Mallory, Jr.

I began to practice at a time when a telephone was a stationary object, certainly attached to a cord which inevitably was connected to an apparatus in the wall. Cordless phones were just coming into vogue and needless to say, cellular phones were not on the horizon. Facsimile machines did not exist and overnight mail involved an imprecise evaluation of each of the necessary factors which could result in the receipt of a document mailed with the U.S. Postal Service, preferably in the same zip code, within the same city and hopefully before an arbitrary 12:00 noon pickup. No - Federal Express and the like were not viable options.

Almost 20 years later we have fully integrated the computer age into our daily law practices. Many offices are now equipped with Pentium Local Area Network computers which include CD ROMS and modems which connect to Online Services as well as access to the World Wide Web. Additionally, every office seemingly utilizes facsimile transmissions, e-mail and other modes of instantaneous communication to facilitate and foster efficient law practices. Indeed, it also appears that every litigator is armed with a cellular phone and/or a beeper to insure immediate contact with the litigator's office to enhance productivity and overall case preparation.

The problem with all of these new technologies, however, is that civility among lawyers has suffered. When I began to practice, lawyers exhibited a level of trust and camaraderie which, with few exceptions, fostered a mutual respect and trust in one another that resulted in the efficient handling of litigation matters with a cooperative although adversarial spirit. Twenty years ago, "confirming letters" were written to outline agreements among parties to litigation, reflecting courtesies extended during the discovery process as well as other salient litigation issues. At present, however, "confirming letters" are often only written to serve as exhibits in anticipation of motions to compel seeking monetary sanctions.

In spite of all of the technological advances, we must resist substituting voice mail messages for direct and meaningful conversations regarding the resolution of litigated matters. We must also remember to respect our colleagues and our system of justice when utilizing the instantaneous modes of communication now available.

What really echoes throughout the legal community is "we don't talk anymore." Via fax, overnight mail, e-mail and often through voice mail we communicate impersonal messages which accomplish efficiency, expediency and even productivity but may not necessarily foster civility resulting in the promotion of justice in the resolution of litigated matters.

As litigators, we must therefore continue to utilize the technological advances and innovations of our time in a manner that is consistent with insuring that the system works for all of us — as opposed to utilizing technology to manipulate the ever evolving rules and statutes which govern our profession.

- Discovery vs. Technology -

Before personal computers (BPC), ironically there was no numerical limit on written discovery including Interrogatories, Demands for Production or Request for Admissions. After personal computers (APC), numerical limitations were placed on discovery. Even with the implementation of form interrogatories, APC practitioners have created comprehensive boilerplate objections which generally precede responses to any written discovery, rendering the discovery process meaningless in some cases. Moreover, APC practitioners have also included comprehensive boilerplate motions to compel, seeking sanctions as part of the litigation

arsenal to compel adherence to discovery rules promulgated to foster a meaningful exchange of information and ultimately the resolution of litigated matters. Certainly this process, which implicates and utilizes judicial resources, also seemingly adds to a heightened sense of conflict between lawyers who have a professional responsibility to competently represent their clients.

It is important that APC practitioners be judicious about the appropriate use of Personal Computers and other technological innovations.

- Litigation Section Background and Events -

The Litigation Section continues its distinction as the largest section in the State Bar. The section is governed by an Executive Committee which comprises fifteen members and ten distinguished advisors. Approaching 12,000 members, our section continues to serve its members by producing *California Litigation* three times per year under the direction of Editor-in-Chief Russell Leibson. The section also produces *California Litigation Review* each year with the enthusiastic and competent leadership of Meryl Macklin. *California Litigation Review* highlights significant case developments from the previous year and is distributed to our membership along with all section publications as a benefit to our members.

Current information regarding upcoming events as well as pertinent information regarding the Litigation Section can be obtained online on the world wide web (www) at <http://www.calbar.org/litigation.htm> at calbar.com. Information is updated continuously and members are encouraged to provide input regarding litigation related events by contacting the Section at 415/538-2546.

Two significant educational events will be sponsored in 1998 by the Litigation Section including the annual Symposium and a Week in London. The annual Symposium will be held April 24, 1998, in the Southern California desert at the LaQuinta Resort. This well attended annual event (which alternates between Northern and Southern California) will again showcase a remarkable faculty of outstanding members of the Bench and Bar. The Week in London will be held in June 1998, and will encompass a review of the English Judicial System which will include lectures by our host Master Michael McKenzie QC as well as Local Barristers and Solicitors practicing law in London, England.

I look forward to and depend on your continued participation.

Mr. Mallory, Chair of the Litigation Section practices at Mallory & Brown-Curtis in Los Angeles.

California Litigation is pleased to review original articles submitted for publication.
(Articles should be 8-10 double-spaced pages, or about 2,000 words.)

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